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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.3835 of 2005

Date of decision: 6.8.2007

Gurmail Singh and another **...Petitioners**

Versus

Sukhraj Singh and others **...Respondents**

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. B.S.Sidhu, Advocate for the petitioners
Mr.P.S.Brar, Advocate for respondents No.1 and 2
Mr.I.S.Brar, Advocate for respondents No.4 and 5.

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RAJESH BINDAL, J.

Challenge in the present petition filed under Article 226 of the Constitution of India is to order dated May 17, 2005 passed by learned Executing Court (Additional District Judge), Mukatsar.

The execution proceedings in the present case arose out of two awards in the claim petitions filed under Section 166 of the Motor Vehicle Act, 1988 before the Motor Accident Claims Tribunal, Mukatsar where school going children died in a road accident. In one of the case, the Tribunal awarded a sum of Rs. 3 lacs as compensation to the claimants and in another case Rs. 1,80,000/- was awarded as compensation. In the execution of the decree against the judgment debtors, their land was put to sale in open auction on January 11, 2005. The maximum bid received was Rs. 3,41,000/- The claim made by the petitioners in objections to the execution petition filed by other decree holders was that in terms of Section 73 of the Code of Civil Procedure both the decree holders are entitled to rateable distribution of the assets of the judgment debtors as they have been left with no other property from which the petitioners/objectors could

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recover their amount as per the decree. Besides that second issue raised by the petitioners was that property of the judgment debtors had been sold for lessor amount as the value thereof even on the date of auction was much more. Learned Executing Court dismissed the objections of the petitioners on the ground that property in question could not have been sold for better price but issue regarding ratable distribution was not at all discussed.

Having heard learned counsel for the parties, I find merit in the contention of learned counsel for the petitioners based on Section 73 of the Code of Civil Procedure requiring rateable distribution of the assets of the judgment debtors between the decree holders. The provisions of Section 73 of the Code of Civil procedure are extracted below for ready reference:-

> "**73. Proceeds of execution-sale to be rateably distributed among decree-holders-** (1) Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realiszation, shall be rateably distributed among all such persons:
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> Provided as follows
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> (a) where any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not be entitled to share in any surplus arising from such sale;
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> (b) where any property liable to be sold in execution of a decree is subject to a mortgage or charge the Court may, with the consent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same interest in the proceeds of the sale as he had in the property sold;
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> (c) where any immovable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied-
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> first, in defraying the expenses of the sale;
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> secondly, in discharging the amount due under the decree;

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thirdly, in discharging the interest and principal moneys due on subsequent incumbrances (if any); and

fourthly, rateably among the holders of decrees for the payment of money against the judgment-debtor, who have, prior to the sale of the property, applied to the Court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof.

(2) Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

(3) Nothing in this section affects any right of the Government."

Learned counsel appearing for respondents No.1 and 2, the other decree holders, could not raise any serious objection to this argument raised by learned counsel for the petitioners as the provisions of Code of Civil Procedure are quite categoric on the issue. Learned Executing Court even though referred to this argument of the petitioners in para l of its order but did not deal with the same and only considered the other contentions raised by the petitioners. As the provisions of Section 73 of Code of Civil Procedure clearly provide that where assets are held by a Court and the claim of more than one party is pending before the Court for the execution of the decrees of the payment of money against the judgment debtors the sale proceeds thereof is to be distributed rateably. Accordingly, it is directed that amount of sale proceed received in auction of the land of judgment debtors be rateably distributed between both the decree holders.

As far as the contention raised by learned counsel for the petitioners regarding sale of land of the judgment debtors at a price less than the market price is concerned, it is found that in the objection petition, learned counsel for the petitioners stated that value of the land is not less than Rs. 4 lacs per acre as has been noticed by the Executing Court in the impugned order, however, when an offer was made by the Court to the petitioners to purchase the entire land at the same value, they refused to accept that. At the time of arguments, learned counsel for the petitioners

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could not dispute that price of land mentioned in the objection petition was exhorbitant but he stated that auctioned land can be sold around Rs. 2,50, 000/- per acre. However, this is not a ground to set aside auction already made after following due procedure. In case petitioners felt that the value of the land on the date of auction was better than the price received in the auction proceeding, they could very well offer the same. It is too late in the day to raise this argument without pointing out any defect in the process of auction of the land. Accordingly, I do not find any merit in this contention of the petitioner.

Accordingly, revision petition is partly allowed only to the extent that the sale proceed of the land of the judgment debtors be rateably distributed between the decree holders. The impugned order passed by the Executing Court is modified to this extent.

August 6, 2007 **(Rajesh Bindal)**
Pka **Judge**